



January 9, 2012

VIA E-MAIL

Ms. Rosalinh Ung
Associate Planner
City of Newport Beach Planning Division
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Re: Comments by MIG Real Estate regarding the City of Newport Beach's Notice of Preparation for an Environmental Impact Report for Uptown Newport Project (PA2011-134)

Dear Ms. Ung:

We are writing this letter in response to the City of Newport Beach's (the "City") recent Notice of Preparation of a Draft Environmental Impact Report ("EIR") and Initial Study¹ for the Uptown Newport Project (the "Project" or the "Shopoff Project") located at 4311 and 4321 Jamboree Road in Newport Beach, California. The Merage family (the "Owner") owns the building located at 4350 Von Karman Avenue (the "Office Building") within Koll Center Newport. MIG Real Estate ("MIG"), formerly known as Stoneridge Capital Partners, occupies a portion of the Office Building. MIG is a company owned and operated by the Owner. I am writing this letter on behalf of the Owner and MIG.

The Owner has owned the Office Building for approximately eight years. Koll Center Newport is "home" to the corporate offices of a number of tenants, including MIG. The Owner specifically purchased the Office Building for two primary reasons: first, the low-density nature of the surrounding suburban office park; second, the prevalence of surface parking and its proximity to the Office Building.

MIG remains concerned over the City's September 2010 approval of the "Integrated Airport Area Conceptual Development Plan".² This Conceptual Development Plan relates to

¹ JOANN HADFIELD, INITIAL STUDY FOR: UPTOWN NEWPORT (PA 2011-134) (Dec. 2011), *available at* http://www.newportbeachca.gov/pln/CEQA_REVIEW/Uptown%20Newport_NOP-IS/02_Initial%20Study-December%202011.pdf [hereinafter INITIAL STUDY].

² CITY OF NEWPORT BEACH, CITY COUNCIL STAFF REPORT: AIRPORT BUSINESS AREA INTEGRATED CONCEPTUAL DEVELOPMENT PLAN (PA2007-170 & PA2008-063) (Sept. 28, 2010), *available at*

development of the area bounded by Jamboree Road, MacArthur Boulevard, and Birch Street. This area includes both the Shopoff Project and a related project regarding the Koll Center Newport property (the "Koll Project"), which surrounds the Office Building. As you know, MIG was disappointed that the City Council considered and approved this Conceptual Development Plan for both properties without any compliance with the California Environmental Quality Act ("CEQA").

It is extremely important for the City to consider the interrelated and cumulative impacts of these two projects. Because the City is proceeding first with an EIR for the Shopoff Project, before doing any environmental analysis of the Koll Project, the City must ensure that this EIR for the Shopoff Project addresses its impacts cumulatively in light of the proposed Koll Project, in order to avoid impermissible "piecemealing" of the Project in violation of the CEQA. MIG was pleased to hear at the December 15, 2011 Scoping Meeting that impacts from both projects would indeed be addressed in this EIR, as well as impacts on and from surrounding uses.

MIG also requests that this EIR include and address the following issues and concerns.

Traffic Impacts

1. **Cumulative Impacts from Vehicular Traffic.** The EIR should include a description and analysis of the interrelated vehicular access (cars, trucks, deliveries) and circulation among all the uses in the area. The Conceptual Development Plan clearly shows that there is access to the Shopoff Project from Von Karman Avenue using three entry points through the Koll Project.³ Traffic impacts will stem from both projects, separately and collectively. Accordingly, the EIR should address the cumulative traffic impacts from both proposed projects. (See *Sunnyvale W. Neighborhood Ass'n v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1381 ["An EIR must 'discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable,' which 'means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and *the effects of probable future projects.*'"] [emphasis added] [citing CEQA Guidelines, §§ 15130, subd. (a), 15065, subd. (a)(3)].)

2. **Traffic Phasing Ordinance.** MIG was pleased to see that the EIR will address traffic impacts in the context of Orange County's 2009 Congestion Management Plan.⁴ In addition, the City's Traffic Phasing Ordinance, Municipal Code ch. 15.40, requires traffic analysis for projects that impact certain "primary" intersections. Several of these intersections are near both projects (e.g., Jamboree & Birch, MacArthur & Birch, MacArthur & Von Karman, Jamboree & MacArthur, MacArthur & Campus, and Jamboree & Campus). The Traffic

http://newportbeach.granicus.com/MetaViewer.php?view_id=26&clip_id=1270&meta_id=104352 [hereinafter ICDP PLAN].

³ ICDP PLAN, *supra* note 2, at 30.

⁴ INITIAL STUDY, *supra* note 1, at 49.

Manager has the discretion to select other intersections if the “primary” intersections are not representative. To the extent that project-related traffic will impact the above-listed intersections or others, the traffic study should evaluate this traffic in the context of the Traffic Phasing Ordinance, as noted in the Introduction to the Initial Study.⁵ The traffic study also should evaluate increased traffic related to trips to and from school facilities.⁶

3. **Access.** The EIR should also address the Shopoff Project’s legal right to access its property through and across the Koll Center and other areas. If the Shopoff Project does not have these legal rights and there is insufficient access, the EIR’s analysis of traffic impacts would be inaccurate. For example, the access from Birch Street appears to provide all the access for Phase 2 of the Shopoff Project.⁷ But a property owner indicated that this driveway is only for employee access to parking and that this access is not a public street. Similarly, the areas underlying the Shopoff and Koll Projects are restricted by covenants, conditions, and restrictions that govern the tracts in general and, in some cases, specific properties within those tracts. These restrictions include agreements among the various property owners regarding the payment and maintenance of common areas. Inaccurate assumptions regarding which and to what extent accesses and common areas are available will necessarily lead to an inaccurate evaluation of the impacts from vehicular traffic (as well as from pedestrian traffic).

4. **Parking.** The EIR should examine parking implications and explain how parking will be available for any public users and whether such parking will meet the requirements of the City’s Zoning Code. The EIR also should consider the interaction of residential and commercial use with respect to parking availability and the strong possibility that users of residential parking will try to take commercial parking (and vice versa). Significant issues that will arise include the increased costs of parking, security, utilities, and maintenance for the office users where parking structures and new common areas will now have to be built. And similar to the discussion above, inaccurate assumptions regarding what common areas are available for parking—and how much is available—will necessarily lead to inaccurate analysis of the impacts on parking. MIG was pleased to hear at the Scoping Meeting that the EIR would address these parking issues.

Pedestrian Impacts

5. **Public Safety.** Pedestrian Access over and through the Koll Center to the Shopoff Project should be analyzed, including the public safety issues related to the increased potential for car vandalism and theft and the use of common area amenities. The Initial Study indicates that the parks in the Shopoff Project will be publicly accessible.⁸ The Koll Project similarly will have a publicly accessible park—and two lakes—so there will be even more

⁵ *Id.* at 1.

⁶ *See infra* para. 11.

⁷ INITIAL STUDY, *supra* note 1, at 11, 15.

⁸ *Id.* at 48.

pedestrian and vehicle traffic in these areas.⁹ Accordingly, the EIR should address the cumulative impact of the Shopoff Project's environmental and public safety impacts in light of similar impacts associated with the Koll Project.

6. **Interaction between Shopoff and Koll Projects.** In addition, it appears that the two projects will share boundaries that will not meaningfully segregate the two projects by fences, barriers, or otherwise. Due to the integration of the boundaries, pedestrian traffic through the two projects will intensify. The EIR should address this issue. The EIR should also provide a more detailed cross-section showing clearly the interface between the northern boundary of residential uses in the Shopoff Project and the southern boundary of office uses in the Koll Project.

7. **Interaction between the Shopoff and Koll Projects and Surrounding Areas.** Given that many of the residents of these two projects will work in the surrounding community and visit the surrounding areas for recreation, the EIR should address the impacts from the increased level of vehicular and pedestrian traffic on the surrounding community. This includes, for example, the impacts of increased pedestrian, bicycle, and other small vehicle traffic on major arterial roadways like Jamboree Road.

8. **Interaction between Residential and Business Uses.** As noted above, the original conception and planning for this area contemplated business and commercial use for this office park. Adding a substantial residential element in the middle of this established business community will add a variety of new impacts (as well as intensify existing impacts) both to the internal Koll Center North project and to the surrounding area. MIG was pleased to hear at the Scoping Meeting that the EIR would address these issues.

Building Height Impacts

9. **Airport Land Use Commission Requirements.** The Shopoff Project proposes high-rise buildings up to 150 feet in height among other mid-rise residential buildings.¹⁰ The high-rise buildings will be approximately 15 stories, and MIG expects the development of these buildings to be consistent with the Airport Land Use Commission requirements that have become more stringently enforced.

10. **Shadow and Light.** MIG is very concerned about potential shadow issues within Koll Center. MIG is most concerned about the potential for shadows cast upon the retention basin, which acts as an amenity to the Office Building. MIG is also concerned about shadows cast on the nearby buildings, including the Office Building, which may prevent, impact, and impair the Office Building's access to solar energy. MIG was pleased to see that the Initial Study indicates that the EIR will include a shade and shadow study.¹¹ This study should include an evaluation of the impacts created by the dense planning of mid-rise and

⁹ See ICDP PLAN, *supra* note 3, at 11, 83.

¹⁰ INITIAL STUDY, *supra* note 1, at 2.

¹¹ See *id.* at 30.

high-rise structures, especially in the winter season. MIG also looks forward to seeing how the developers intend to mitigate these impacts.

School District and Public Park Impacts

11. **School-related Traffic and Potential Construction.** The EIR should address the impacts from additional traffic to and from school facilities located within the more remote Santa Ana Unified School District boundaries for children of residents of the Shopoff Project, as well as environmental impacts from any new construction of school facilities necessary to accommodate this extra influx of students. (See *Chawanakee Unified Sch. Dist. v. Cnty. of Madera* (2011) 196 Cal.App.4th 1016, 1028-29.) Given that there are over 1500 residential units planned and over 3000 persons allowed for both projects combined,¹² vehicle traffic associated with trips to and from these more remotely located schools will rise significantly. In addition, school facilities at local Santa Ana Unified School District schools may require augmentation to accommodate these extra students. The EIR will have to address any such necessary construction as an indirect impact of the Shopoff Project, as well as the cumulative impact of the Shopoff Project and the Koll Project. The EIR should discuss how the school population will be served in this area which had never been planned by the city for residential development until recently.

12. **Park Facilities and Recreation Services.** MIG was pleased to see that the EIR will be evaluating project impacts to local park facilities and recreation services, as the “project would increase usage of parks in the surrounding community.”¹³ It should be noted that within the Airport Business Complex (“ABC”), city planning had never contemplated the introduction of residential units until now or planned for neighborhood and community parks with improved facilities to serve the ABC. As a consequence, the several public parks near the project area in the City of Irvine (UC Irvine Arboretum, 0.2 mi E; William R. Mason Park, 1.5 mi E; Stanford Park, 1 mi S; University Cmty. Park, 2.1 mi E; Bill Barber Cmty. Park, 2.4 mi NE; Civic Center Park, 2.5 mi E) and in the City of Newport (Bonita Creek, Bonita Canyon, Arroyo, and Buffalo Hills parks) will also see an increased level of use, and the EIR should address the impacts to and interaction with these other parks. Additionally, these parks may not have the capacity to serve all the recreational needs of this new community.

Water Supply Impacts

13. **Cumulative Impacts from Shopoff and Koll Projects.** The EIR should address the cumulative impacts on water supply and demand from both the Shopoff Project and the Koll Project. The Water Supply Assessment (“WSA”) prepared in March 2011¹⁴ appears to apply only to the Shopoff Project. Similarly, the Initial Study refers to the WSA in the context of “with-project” (or “Demand with Project”) and “without-project” (or “Baseline”)

¹² See ICDP PLAN, *supra* note 3, at 7; INITIAL STUDY, *supra* note 1, at 47.

¹³ INITIAL STUDY, *supra* note 1, at 47.

¹⁴ IRVINE RANCH WATER DISTRICT, WATER SUPPLY ASSESSMENT FOR UPTOWN NEWPORT VILLAGE SPECIFIC PLAN PROJECT (Mar. 15, 2011) [hereinafter IRWD WSA].

conditions.¹⁵ But the WSA also has a “full build-out” (or “WRMP Build-out Demand”) projection.¹⁶ It is unclear whether the WSA assessed water supply and demand with respect to the Koll Project, and if so, where the WSA addressed this issue. The EIR should address this issue more clearly.

14. Clearer Water Supply Assessment. The WSA March 2011 is difficult to understand. For example, in all of the scenario assessments for potable water, the baseline demand for future years is higher than both the with-project and the full build-out scenarios.¹⁷ Similarly, the with-project scenario has the lowest water demand for all future years for potable water.¹⁸ The WSA defines the with-project scenario as “Project water demands [added] to the baseline demands.”¹⁹ The full build-out scenario is “potential demands for all presently undeveloped areas of IRWD”.²⁰ The baseline scenario “consist[s] of demand from existing development, plus demand from development that has both approved zoning and [if required] an adopted water supply assessment”, but does not include Project water demands.²¹ It is curious that the “full build-out” scenario is lower than the baseline scenario, which means that “potential demand for all undeveloped areas of IRWD” is lower than the baseline. It is difficult to understand why this would be the case given thousands of residential units and persons proposed for addition to the site. The WSA does not make much sense, unless the Project somehow reduces demand for water compared with existing facilities. There is no indication in the WSA that this is the case.

The WSA methodology in calculating Reserve Water Supply (supply minus demand) is similarly difficult to comprehend. For example, in Figure 2 (“IRWD Single Dry-Year Supply & Demand – Potable Water”), the figure for “Reserve Supply with Project” results from subtracting “WRMP Build-out Demand” from “Maximum Supply Capability” (118,069 minus 94,706).²² But in Figure 3 (“IRWD Multiple Dry-Year Supply & Demand – Potable Water”), the figure for “Reserve Supply with Project” results from subtracting “Demand with Project” from “Maximum Supply Capability” (118,069 minus 93,554).²³ The numbers in Figures 2 and 3 are otherwise identical. “Reserve Supply with Project” suggests that the correct calculation in any case would be supply minus the with-project demand.²⁴ The WSA does not explain why in the single dry-year scenario, Reserve Water Supply is calculated using full build-out demand, while in the multiple dry-year scenario, it is calculated using only with-project demand. The EIR should explain this and other seemingly inconsistent calculations in the WSA. The CEQA requires a valid WSA as part of the EIR. (See WATER CODE, § 10911, subd. (b); PUB. RES. CODE, § 21151.9.)

¹⁵ INITIAL STUDY, *supra* note 1, at 50.

¹⁶ IRWD WSA, *supra* note 14, at 3, 9-10.

¹⁷ See *id.* at 10-13, 18-20.

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 11.

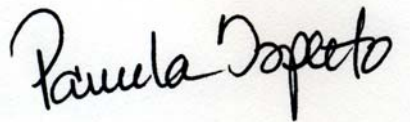
²³ *Id.* at 12.

²⁴ See *id.* at 9.

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Should you have any questions about our comments or desire more information about the Office Building and our concerns, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Pamela Sapetto". The signature is written in a cursive style with a large initial "P" and a stylized "Sapetto".

Pamela Sapetto
CEO / President
of SAPETTO GROUP, INC.